Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 92-24
Local Exchange Carrier Line Information Database	)	

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COMMENTS ON DIRECT CASES

Pursuant to the Commission's LIDB Designation Order[1] International Telecharge, Inc. ("ITI") hereby submits its comments on the Direct Cases of the local exchange carriers ("LECs") submitted to the Commission in support of their Line Information Database ("LIDB") tariffs.

ITI is submitting these comments on one issue raised in the LIDB Designation Order: the liability of the LECs for fraudulent calls placed using LEC-issued calling cards which are accepted by interexchange carriers ("IXCs") in reliance on LIDB validation data. As explained further below, there is an enormous inconsistency between the allocation of risk of liability for fraud among the LECs and AT&T under their Mutual Honoring Agreements ("MHAs") and the allocation of risk available to all other IXCs under the LIDB tariffs. This apparent off-tariff discrimination of the LECs in favor of AT&T is not addressed in the LECs' Direct Cases and warrants close investigation by the Commission.

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[1] Local Exchange Carrier Line Information Data Base, CC Docket No. 92-24, DA 92-347 (released Mar. 20, 1992) ("LIDB Designation Order").

I. BACKGROUND

Prior to divestiture, the LECs and AT&T operated a shared 0+ calling card system, using the same calling card numbers, validation and billing systems.[2] Following divestiture, the shared system was divided among the BOCs and AT&T pursuant to the Plan of Reorganization ("POR").[3] Under the POR, the LECs received the Database Administration System ("DBAS"), which kept the calling card validation database up to date, and AT&T obtained the Billing Validation Application ("BVA") system, which actually validated the shared calling cards.[4] Following divestiture, the LECs and AT&T continued to operate the calling card system as a shared system pursuant to Shared Network Facilities Agreements ("SNFAs"), which expired December 31, 1991.[5]

Beginning in 1990, AT&T began issuing 0+ calling cards in the Card Issuer Identifier ("CIID") format which were "proprietary" to AT&T. There are now approximately 30 million AT&T CIID cards in circulation. Although the LECs have been permitted to accept these cards for intraLATA calling, validation and billing information concerning these cards has not been made available to competing

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[2] See United States v. Western Elec. Co., 698 F. Supp 348 (D.D.C. 1988) (describing fully pre- and post-divestiture calling card arrangements of AT&T and the Bell Operating Companies ("BOCs")).

[3] Id. at 351.

[4] Id.

[5] AT&T's Direct Case at 7, AT&T Communications, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 3380, 3537, 3542, and 3543 (filed Jan. 30, 1992) ("OCP Discounts Investigation").

IXCs.[6] In contrast, pursuant to a decision of the MFJ Court, all IXCs have had nondiscriminatory access to shared calling card validation and billing since 1988.[7]

With the expiration of the SNFAs and AT&T's issuance of 0+ proprietary calling cards, AT&T renegotiated its calling card validation arrangements with the LECs.[8] According to AT&T, the new contracts, known as the MHAs, change the relationship of AT&T and the LECs on a number of matters, including liability for validation information in the LEC data bases. AT&T has stated to the Commission:

> The MHAs were developed with the knowledge that there would be two separate calling card systems, developed and maintained separately by AT&T and the LECs, to replace the shared DBAS/BVA environment. The parties recognized that the existence of these new and separate systems would create a number of circumstances that did not exist in the shared system environment. One of the most significant was the need for AT&T and the LECs, as card issuers, to take responsibility for the information in their own validation systems and for the creditworthiness of their own customers.[9]

As described by AT&T, under the SNFAs, "the carrier which transported the call was responsible to bill for the call and was

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[6] The issue of whether AT&T may claim a proprietary right in 0+ CIID cards is currently under consideration by the Commission in Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, FCC 92-169 (rel. May 8, 1992). ITI filed comments requesting the Commission to permit all IXCs nondiscriminatory access to validation and billing of 0+ proprietary cards.

[7] United States v. Western Elec. Co., 698 F. Supp 348 (D.D.C. 1988).

[8] AT&T Direct Case, Attachment B at 1-2, OCP Discounts Investigation.

[9] Id. at 2.

also financially liable if the customer did not pay."[10] However, under the MHAs, this relationship is restructured such that "the card issuer, rather than the carrier, [takes] administrative and financial responsibility for calls charged to its card."[11] In other words, under the MHAs, the LECs are liable for all fraud occurring on AT&T's network for interLATA usage of LEC calling cards, while AT&T maintains all responsibility for fraud occurring on the LECs' networks for intraLATA usage of AT&T CIID cards.

As explained by AT&T, the restructured allocation of responsibility for fraud in the MHAs was necessary because, with separate calling card systems, "AT&T will not be able to place into LIDB its own indicators, based upon AT&T's experience with that customer or card number. Thus it will not have from LIDB the same ability it had in the BVA environment to reject calls charged to a LEC card number which had been involved in fraud on the AT&T (but not the LEC) network."[12] AT&T further explained that the revised relationship "is also consistent with standard commercial charge card practices." [13]

In contrast to this completely restructured allocation of the risk of fraud granted to AT&T, the LIDB tariffs offer all other carriers the same arrangements which all carriers -- including AT&T -- had prior to the expiration of the SNFAs and the implementation

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[10] Id.

[11] Id. at 5.

[12] Id. at 5.

[13] Id. at 6.

of LIDB. Under the LIDB tariffs, even if the LIDB validation data on which they rely in accepting a LEC-issued card is erroneous, IXCs will be liable for the fraud occurring on their networks by customers using LEC-issued cards. As discussed below, the LEC/AT&T relationship in the MHAs raises serious issues of discrimination and undisclosed off-tariff deals which warrant close scrutiny by the Commission.

II. THE COMMISSION SHOULD INVESTIGATE THE APPARENTLY DISCRIMINATORY, OFF-TARIFF ARRANGEMENT BETWEEN AT&T AND THE LECS UNDER THE MHAS GOVERNING RISK OF CALLING CARD FRAUD

In CC Docket No. 91-115, the FCC held that the provision of LEC calling card validation and screening data through the LEC LIDB databases was a common carrier communications activity governed by Title II of the Communications Act.[14] As such, the Commission held that the rates, terms and conditions of LIDB service must be tariffed.[15]

In Docket No. 91-115, the Commission also found that "a LEC which agrees to enter into an agreement with one IXC to accept its calling card for LEC service and query that IXC's database to validate the card must do so on a nondiscriminatory basis for all other IXCs, if they so request."[16] The Commission noted that "the terms of those agreements may reasonably vary depending upon the

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[14] Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, paras. 18-26, CC Docket No. 91-115, FCC 92-168 (rel. May 8, 1992).

[15] Id. para. 30.

[16] Id. para. 36.

requirements of the LEC and particular IXC."[17]

Section 203(a) of the Communications Act requires common carriers to file public tariffs with the Commission "showing all charges . . . and showing the classifications, practices, and regulations affecting such charges."[18] The purpose of requiring common carriers to file public tariffs was to make all rates, charges, terms and conditions of common carrier service a matter of public record in order to prevent discriminatory rates and preferences which occur when an entity offers its services pursuant to private contracts negotiated secretly.[19]

Although, pursuant to Section 211 of the Act, common carriers are permitted to arrange their relationships through contracts as well as tariffs,[20] those contracts may not lawfully discriminate among carriers and cannot offer terms and conditions inconsistent with tariffs required by the FCC. The Commission has "the authority to determine whether the terms and conditions [of an intercarrier contract] are consistent with the provisions of the

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[17] Id. para.37.

[18] 47 U.S.C. 203(a).

[19] The tariff provisions of the Communications Act were modeled on the Interstate Commerce Act, which was enacted due to "widespread and vociferous dissatisfaction with the operation of the country's railroads." American Broadcasting Cos. v. FCC, 643 F.2d 818,821 (D.C. Cir. 1980). Railroad management was seen as preventing free competition "by an elaborate system of secret special rates, rebates, drawbacks and concessions, to foster monopoly [and] to enrich favored shippers." S. Rep. No. 46, 49th Cong., 1st Sess. 181-82 (1886) quoted in id.

[20] 47 U.S.C. 211.

Act."[21] Further, the Commission may "modify carrier to carrier contracts not in the public interest because they are unjust, unreasonable, unduly discriminatory or preferential."[22]

It appears, based on the information available, that the LECs are granting AT&T a special deal in the MHAs on the issue of fraud that is not also offered to other IXCs under the LIDB tariffs. The allocation of the risk of fraud on LEC-issued cards is a critical term in the LIDB tariffs. It is not a term that can "reasonably vary" in contractual arrangements with IXCs and clearly cannot vary from public tariffs. There would be no purpose to the Commission requiring the LECs to file the rates, terms and conditions for LIDB service in public tariffs if they were permitted to grant preferences to individual IXCs. Therefore, it appears that the MHAs offer AT&T an unlawful, off-tariff deal.

Further, the inconsistency in the allocation of the risk of fraud in the MHAs and the LIDBs appears to be unlawfully discriminatory under Section 202(a) of the Act. Under the MHAs, in exchange for accepting all risk of fraud on LEC-issued cards carried by AT&T, the LECs no longer bear the risk of fraud on any AT&T CIID cards they accept for intraLATA calls. Thus, the LECs have obtained some unquantified modicum of value for their re-allocation of risk on LEC cards. Consistent with Section 202(a) of the Act, all IXCs should be offered the same arrangement. There is

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[21] Bell Sys. Tariff Offerings, 46 F.C.C.2d 413, 431, aff'd on other grounds sub nom. Bell Tel. Co. of Pa. v. FCC, 503 F.2d 1250 (3d Cir. 1974), cert. denied, 422 U.S. 1026 (1975).

[22] Puerto Rico Tel. Co., 92 F.C.C.2d 1444, 1458 (1983).

no reason why this value cannot be quantified and offered on nondiscriminatory terms to other carriers that do not also offer 0+ calling cards.[23]

The impropriety apparent in the MHA fraud provisions is further accentuated by the record established in the OCP Discounts Investigation. The comments of some of the LECs indicate that AT&T obtained its special fraud arrangements with the LECs, not through mutual agreement, but through an exercise its notable market power in the calling card and operator services markets. As one LEC described the "negotiation" process:

> AT&T's Direct Case suggests that the arrangements were negotiated, and states that AT&T proposed the actual form of the Mutual Honoring Agreements. Whidbey's experience is quite different. When AT&T's proposed Mutual Honoring Agreement was finally presented to Whidbey in May 1991, Whidbey responded with a number of written comments on the proposed form of agreement. AT&T's reply was that it would accept absolutely no revisions whatsoever to the proposed form of agreement. Thus, insofar as Whidbey is concerned the terms of the proposed arrangements were unilaterally dictated by AT&T.[24]

Whidbey also noted that it "has never been in agreement with the proposition that it (and other LECs) should become responsible for fraud/non-payment associated with AT&T-carried calls that are

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[23] Indeed, as established in the records in CC Docket No. 91-115 and CC Docket No. 92-77, AT&T is the only IXC which has the market power to issue a 0+ proprietary calling card in the current premises presubscription operator services market. See, e.g., Comments of International Telecharge, Inc., CC Docket No. 92-77 (filed June 2, 1992). Therefore, unless the LECs place a value on the fraud arrangements granted to AT&T under the MHAs and offer similar arrangements to all IXCs, AT&T will have been granted an exclusive privilege which is, for all practical purposes, unavailable to any other IXC.

[24] Opposition to Direct Case of Whidbey Tel. Co. at 8-9, OCP Discounts Investigation (filed Feb. 27, 1992).

charged to LEC-issued calling cards. It is Whidbey's understanding that many other Independent LECs have shared this same view. Thus, from Whidbey's perspective, it is AT&T that has unilaterally insisted on the LECs accepting such responsibility."[25]

III. CONCLUSION

The tremendous discrepancy between the allocation of the risk of liability for fraud under the LIDB tariffs and the MHAs raises serious questions of apparently discriminatory, off-tariff arrangements that are unlawful under the Communications Act. Accordingly, the Commission should investigate these matters

[25] Id. at 9-10.

closely and require the LECs to justify their agreements with AT&T.

Respectfully submitted,

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